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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NAVIGATORS MANAGEMENT
COMPANY, INC.in its individual capacity
and on behalf of NAVIGATORS
INSURANCE COMPANY, INC.

Plaintiff,

v.

OREGON INTERNATIONAL AIR
FREIGHT CO., d/b/a OIA Global

Defendant.

Case No. 3:21-cv-1703

**COMPLAINT FOR DAMAGE TO
CARGO**

(Damages in the sum of \$99,250.00)

Plaintiff's complaint follows:

1. Plaintiff Navigators Management Company, Inc. ("Plaintiff"), is now, and at all times herein material was, a corporation duly organized and existing by virtue of law, and was the insurer of the hereinafter described shipment.
2. Plaintiff is informed and believes that defendant OREGON INTERNATIONAL AIR FREIGHT CO. ("Defendant") is now, at all times material herein was, a corporation duly organized and existing by virtue of law and engaged in the business as a common carrier for hire

and transportation intermediary within the United States and this judicial district, with places of business in this district.

3. Plaintiff's complaint contains a cause of action for damage to cargo arising under a statute of the United States, namely the Carriage of Goods by Sea Act, 46 U.S.C. § 30701 note, *et. seq.* (2006) ("COGSA") and is therefore within the jurisdiction of this Court pursuant to 28 U.S.C. § 1331, as more fully appears herein. Additionally, the Court has admiralty jurisdiction pursuant to 28 U.S.C. § 1333. These are admiralty and maritime claims within the meaning of Rule 9(h), Federal Rules of Civil Procedure, as hereinafter more fully appears.

4. On or about November 11, 2020, at Vung Tau, Vietnam, Defendant and its agents and subcontractors received a shipment of 980 cartons of diaper bags (the "Cargo") for carriage under Oregon International Air Freight Co. bill of lading no. S01216890 and others, issued by and/or on behalf of Defendant, under contracts of carriage and in return for good and valuable consideration, agreed to carry said cargo from Vung Tau, Vietnam to Salt Lake City, Utah, via the port of Long Beach, California, and there deliver said cargo to the lawful holder of the bills of lading, and others, in the same good order, condition, and quantity as when received.

5. The Cargo was placed aboard the vessel ONE APUS for transport from Vung Tau, Vietnam to Salt Lake City, Utah. During the ocean transit to Long Beach and on or about November 30, 2020, each of the shipments was lost overboard along with more than 1800 other ocean containers of cargo, resulting in likely the second largest cargo loss in history.

6. Following the loss, the vessel diverted to Kobe, Japan, where repairs were made, however, despite reasonable requests, Plaintiff's consultants, and experts and those of other cargo interests were refused to allow to board the vessel to inspect the damage and other evidence relevant to the container loss failure, with such actions potentially constituting spoliation.

7. The vessel subsequently arrived at Long Beach, California on or about April 19, 2021, and as of that date, Plaintiff is informed and believes that many cargo owners still did not know whether their cargo was damaged or lost overboard.

8. Prior to the shipment of the herein described cargo and prior to any loss thereto, Plaintiff issued its policy of insurance whereby Plaintiff agreed to indemnify the owner of the Cargo, and its assigns, against loss of or damage to the Cargo while in transit, including mitigation expenses, and Plaintiff has therefore become obligated to pay, and has paid, to the person entitled to payment under said policy the sum of \$99,250.00, which is the value of the damaged Cargo on account of the herein described loss.

FIRST CAUSE OF ACTION

(Damage to Cargo - COGSA)

9. Plaintiff refers to and incorporates herein by reference paragraphs 1-8 as though fully set forth herein.

10. Defendant, under contracts of carriage, namely Oregon International Air Freight Co. bill of lading no. S01216890 and others, and in return for good and valuable consideration, agreed to carry the Cargo from Vung Tau, Vietnam to Salt Lake City, Utah and there deliver said shipment in the same good order, condition, and quantity as when received to the lawful owner of the shipment.

11. Thereafter, in breach of and in violation of said agreements and their duties as a common carrier of goods by sea for hire, Defendant did not deliver the Cargo in the same good order, condition, and quantity. To the contrary, Defendant failed to deliver the shipment it received as the shipment was lost overboard during the ocean carriage. As a result, Defendant is liable for the total loss of the Cargo.

12. By reason of the Defendant's failure to deliver the shipment it received in the same good order and condition, Defendant has caused a loss to Plaintiff in the amount of loss of \$99,250.00, no part of which has been paid by Defendant, despite demand therefor.

WHEREFORE, Plaintiff prays relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(Breach of Contract)

13. Plaintiff refers to and incorporates herein by reference paragraphs 1-8 as though fully set forth herein. This cause of action is pled in the alternative.

14. Defendant, under contracts of carriage, namely Oregon International Air Freight Co. bill of lading no. S01216890 and others, and in return for good and valuable consideration, agreed to transport and carry the Cargo from Vung Tau, Vietnam to Salt Lake City, Utah and there deliver said shipment in the same good order, condition, and quantity as when received to the lawful owner of the shipment.

15. In breach of said contract, Defendant did not deliver the shipment it received in the same good order, condition, and quantity as when received. To the contrary, Defendant failed to deliver the Cargo in the same condition as received, as the Cargo was lost overboard and/or damaged during the ocean carriage.

16. By reason of Defendant's failure to deliver the Cargo it received in the same good order and condition, Defendant has caused a loss to Plaintiff in the amount of \$99,250.00, no part of which has been paid by Defendant, despite demand therefor.

WHEREFORE, Plaintiff prays relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(Bailment)

17. Plaintiff refers to and incorporates herein by reference paragraphs 1-8 as though fully set forth herein. This cause of action is pled in the alternative.

18. In receiving and arranging for the shipments of cargo, either by themselves or through their agents, Defendant, acted as bailees for hire, setting up a bailment agreement as a matter of law. In breach of said bailment agreement, Defendant failed to safely deliver the Cargo in the same good order and condition. To the contrary, the Cargo was not delivered or delivered damaged.

19. By reason of Defendant's failure to deliver the Cargo it received in the same good order and condition, Defendant has caused a loss to Plaintiff in the amount of \$99,250.00, no part of which has been paid by Defendant, despite demand therefor.

WHEREFORE, Plaintiff prays relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Damage to Cargo – Harter Act, 46 U.S.C. § 30704)

20. Plaintiff refers to and incorporates herein by reference paragraphs 1-8 as though fully set forth herein. This cause of action is pled in the alternative.

21. Defendant, under contracts of carriage, namely Oregon International Air Freight Co. bill of lading no. S01216890 and others, and in return for good and valuable consideration, agreed to carry the Cargo from Vung Tau, Vietnam to Salt Lake City, Utah and there deliver said shipment in the same good order, condition, and quantity as when received to the lawful owner of the shipment.

22. Thereafter, in breach of and in violation of said agreement and its duties as a common carrier of goods by sea for hire, Defendant did not deliver the Cargo in the same good order, condition, and quantity. To the contrary, Defendant failed to deliver the Cargo as the Cargo was lost overboard during the ocean carriage to Long Beach. As a result, Defendant is liable for the total loss and/or damage to the Cargo.

23. By reason of Defendant's failure to deliver the Cargo it received in the same good order and condition, Defendant has caused a loss to Plaintiff in the amount of \$99,250.00, no part of which has been paid by Defendant, despite demand therefor.

WHEREFORE, Plaintiff NAVIGATORS MANAGEMENT COMPANY, INC. in its individual capacity and on behalf of NAVIGATORS INSURANCE COMPANY, INC. prays for relief as follows:

- A. That this Court enter judgment in its favor and against Defendant for the amount of Plaintiff's damages;
- B. That this Court decree payment by Defendant and to Plaintiff in the sum of \$99,250.00 or another amount to be proven a trial, together with contractual attorneys' fees, prejudgment interest thereon and costs of suit herein;
- C. That Plaintiff have such other and further relief as in law and justice it may be entitled to receive.

Dated this 24th day of November, 2021.

LINDSAY HART, LLP

By: /s/ Matthew N. Miller
Tyson L. Calvert, OSB No. 032809
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Of Attorneys for Plaintiff